IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

Crl.Rev.Pet.No. 191 of 2000()

CRA.203/1998 of SESSIONS COURT, KOTTAYAM
SC.22/1990 of ADDL.SESSIONS COURT, KOTTAYAM

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REVN. PETITIONER:

JAYAKRISHNAN, S/O.MADHAVAN
VALLINAL VEETTIL,
PANCHIPPARA,
POONJAR PO,
KOTTAYAM DISTRICT.

BY ADV. SRI.SHAJI THOMAS PORKKATTIL

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
SUB INSPECTOR OF POLICE,
ERATTUPETTA.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 17/08/2007, ALONG WITH CRRP NO. 229 OF 2000 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. Nos. 191 of 2000 & 229 of 2000

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Dated, this the 17th day of August 2007

ORDER

The petitioner in Crime No. 191 of 2000 is the 6th accused and the petitioners in Crl.R.P. 229 of 2000 are accused Nos. 1 to 5,7 and 8 in S.C. No. 22 of 1990 on the file of the Addl.Asst. Sessions Court, Kottayam. Altogether 8 persons were charge-sheeted by the Sub Inspector of Police, Erattupetta in Crime No. 178 of 1988 for offences punishable under Sections143, 147, 148, 447, 435, 440 and 506 (ii) read with Sections 149 I.P.C. and Sec. 3 of the Explosive Substances Act, 1908.

2. What is unravelled by the prosecution is the following:

P.Ws 1 and 3 are husband and wife. P.W.2 is their son. They were residing at Kishore Bhavan at Panachippara in Poonjar Panchayat. P.W.1 is running a Video Cassette library at Pala. A3 is the wife of A1 and A2 is the son of A1 and A3. On 20-7-1988 at about 2.30 a.m. P.W.1 was aroused in his sleep by the sound of somebody kicking at the kitchen door and the sound of pelting stones on the tiles of their house. P.W.1 immediately put on the lights and came outside to find accused Nos. 1 to 3, 5 and 8 armed with deadly

weapons like wooden stick, chopper etc. on the northern courtyard of his house. Seeing P.W.1, A1 threw a cracker at him. The cracker did not hit him but hit on the wall and exploded. A4, A6 and A7 who were breaking the window panes also joined the other accused. By that time P.W.2 ran towards P.W.1 and accused 2,3 and 4 aiming the choppers in their hands and A5 with a stick threatened that they would immobilise P.W.1. Then P.W.2 told that if they do so, he will not let them free. A6 threw a cracker at P.W.2 but that also hit on the wall of the chimney of the house. A7 and A8 threw stones at the house and A5 also threw crackers at P.W.2. Then to escape from the situation, P.W.1 asked P.W.2 to bring the gun. Hearing this, all the accused made good their escape from the spot. They also damaged the kitchen door, window panes and also vegetation in the property of P.W.1.

3. On the side of the prosecution 11 witnesses were examined as P.Ws 1 to 11. 12 documents as Exts.P1 to P12 and 8 material objects as MOs 1 to 8, were got marked.

4. After the close of the prosecution evidence, the accused were questioned under Sec. 313 (1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against them. They denied those circumstances and maintained their innocence. When called

upon to enter on their defence A3 examined himself voluntarily as D.W.1 and got marked Ext.D1.

5. The learned Addl. Asst. Sessions Judge as per revised judgment dated 4-12-1998 found all the accused guilty of the offences except the offence under Sec. 3 of the Explosive Substances Act, 1908. For the conviction under Sections 143 and 148 accused Nos. 1 and 3 to 8 were each sentenced to undergo simple imprisonment for one month for the conviction under Sec. 440 I.P.C. they were each sentenced to undergo simple imprisonment for six months and to pay fine of Rs. 1,500/- and on default to pay the fine to undergo simple imprisonment for three months each, for the conviction under Sec. 447 I.P.C. they were each sentenced to undergo simple imprisonment for one month and for the conviction under Sections 435 and 506 (ii) read with Sec. 149 I.P.C. they were each sentenced to undergo simple imprisonment for one year each of the offences. No separate sentence was imposed under Sec. 147 I.P.C. With regard to the 2nd accused, he was sentenced to pay fine of Rs. 500/- each under Section 143, 148 and 447 I.P.C. and on default to pay the fine, to suffer simple imprisonment for one month for each of the offences. For the conviction under Sections 440, 435 and 506 (ii) read with Sec. 149 I.P.C. A2 was sentenced to undergo simple

imprisonment for one month each. From out of the fine amount as and when realised, a sum of Rs. 10,000/- was directed to be given to P.W.1 as compensation under Sec. 357 Cr.P.C. The Substantive sentences of imprisonment were directed to run concurrently.

6. On appeal preferred by all the accused as Crl.Appeal No. 203 of 1998 before the Sessions Court, Kottayam, the lower appellate court acquitted all the accused of the offence punishable under Sec. 435 I.P.C. but confirmed the conviction and sentence with regard to the other offences. It is the said appellate judgment which is assailed in these Revisions.

7. Eventhough the learned counsel appearing for the revision petitioners assailed the conviction and sentence on various ground, in as much as the conviction has been rendered by the courts below (which are the final court of facts) after an evaluation of the oral and documentary evidence in the case, this Court sitting in the rarefied revisional jurisdiction will be loathe to interfere with the said conviction which is based on the evidence adduced in this case. In the absence of any infirmity in the appreciation of evidence by the courts below, this Court will not re-appreciate the evidence and come to a different conclusion even if it were possible. But, in case of the charge under Sec. 148 I.P.C. eventhough all the accused were convicted by the

courts below for the said offence, it is discernible from the prosecution evidence that A1 to A3 alone were armed with deadly weapons being members of the unlawful assembly which committed the offence of rioting. A4 to A8 were not armed with deadly weapons although they were members of the unlawful assembly who shared the common object. It is well settled that those members of the unlawful assemble who were not armed with deadly weapons cannot be convicted under Sec. 148 I.P.C. with the aid of Sec. 149 I.P.C. and only those members who were actually armed with deadly weapons could be convicted under Section 148 I.P.C. Vide **Kabul Singh Vs. State of Punjab - 1995 SCC Crl. 1035** and **Kottintavida Suresh v. State of Kerala - 2005 (3) KLD 619) .** Hence the conviction and sentence passed against accused Nos. 4 to 8 for the offence punishable under Sec. 148 I.P.C. is set aside. With regard to the remaining offences the finding recorded by the lower appellate court justify the conviction. Subject to the above, I, therefore, confirm the conviction recorded by the lower appellate court against the revision petitioners.

8. What now survives for consideration in these revisions is as to the legality and extent of the sentence. This case had a chequered progression. There was once a remand to the trial court from the

lower appellate court . The occurrence itself took place on 20-7-1988. The accused have undergone the trauma and ordeal of a protracted trial and at the crime stage they were in jail for eight days. The sword of Damocles had been hanging on their heads for an unduly long period. Taking these mitigating circumstances into account, I am of the view that the revision petitioners do not deserve penal servitude by way of incarceration and that an appropriate enhancement of fine and a direction to pay compensation for the offences other than the offence punishable under Sec. 440 I.P.C. and imprisonment till rising of court besides fine for the offence punishable under Sec. 440 I.P.C. (for which imprisonment is mandatory) shall meet the ends of justice. Accordingly, the sentence imposed on the revision petitioners by the lower appellate court for the aforementioned offences is set aside. Instead, A1 to A8 are each sentenced to imprisonment till rising of court and to pay fine of Rs. 2000/- under Sec. 440 I.P.C.. For their conviction under Sections 148, 506 (ii) and 447 I.P.C. A1 to A3 are each sentenced to pay a fine of Rs. 2,000/- each and on default to pay the fine to suffer simple imprisonment for one month . For their conviction under Sec. 143 I.P.C. A1 to A8 are each sentenced to pay fine of Rs. 2000/- and on default to pay fine to suffer simple imprisonment for one month.

For their conviction under Secs. 506 (ii) and 447 I.P.C. A4 to A8 are each sentenced to pay fine of Rs. 1,500/- and on default to pay the fine to suffer simple imprisonment for one month. The fine amount shall be paid within 45 days from today failing which the defaulting accused shall undergo the default sentence as indicated above. From out of the fine amount, Rs. 15,000/- shall be paid to P.W.1 by way of compensation under Sec. 357 (1) Cr.P.C. The trial court shall give appropriate set off in case any portion of the fine has been remitted by any of the accused.

In the result these revisions are disposed of confirming the conviction (except the one punishable under Sec. 148 I.P.C. with regard to A4 to A5) but modifying the sentence as above.

V. RAMKUMAR,
(JUDGE)

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V. RAMKUMAR, J.

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Crl.R.P. Nos. 191
of 2000 & 229 of 2000

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Dated, this the
17th day of August 2007

ORDER